

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

KYMM CHANDLER,

Petitioner,

:

v.

**SHELBIE SMITH, WARDEN,
BELMONT CORRECTIONAL
INSTITUTION,**

**Case No. 2:24-cv-3982
Chief Judge Sarah D. Morrison
Magistrate Judge Michael R.
Merz**

:

Respondent.

ORDER

This matter is before the Court on Petitioner Kymm Chandler's Objections to the Magistrate Judge's Report and Recommendation recommending his habeas corpus petition be dismissed without prejudice pending his exhaustion of available state court remedies. (ECF Nos. 16–17.)

If a party objects to a report and recommendation, the Court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b). Upon review, the Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1).

Petitioner's Objections confirm that he has not yet exhausted available state court remedies. Indeed, he admits that he has an active appeal pending in the Stark County Court of Appeals. (ECF No. 17, PAGEID # 77.) Petitioner will not have exhausted state court remedies until his appeal is decided and, if he fails, he seeks

review by the Ohio Supreme Court. In addition, Petitioner will not be harmed by dismissing his case without prejudice because he can proceed on an amended or renewed petition without facing the second or subsequent bar of 28 U.S.C. § 2244(b). If Petitioner is unsuccessful in exhausting his remedies in state court and then decides to pursue a writ of habeas corpus, he should file his amended petition using the same case number as above to ensure continuity of judicial consideration.

Accordingly, Petitioner's Objections (ECF No. 17) are **OVERRULED**, and the Report and Recommendation (ECF No. 16) is **ADOPTED** and **AFFIRMED**. This action is **DISMISSED without prejudice**. The Court **DECLINES** to issue a certificate of appealability. The Clerk is **DIRECTED** to **TERMINATE** this case.

IT IS SO ORDERED.

/s/ Sarah D. Morrison
SARAH D. MORRISON, CHIEF JUDGE
UNITED STATES DISTRICT COURT